

Department of Marine Resources

NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE: Chapter 6 Lobster Processing ~~Procedures For Lobster Tail Permit Holders~~

CONCISE SUMMARY: The proposed rulemaking creates a two tiered approach for a Lobster Processor license that would allow both processing of tails and lobster parts with a fee of \$500 (new); and a Lobster Processor Tails only license for processing only lobster tails with a fee of \$159 (new fee and similar to the former lobster tail permit). The proposed rules would also update the lobster meat permit rules (similar to the repealed lobster meat permit in statute with no change to license fee) for consistency and enforcement. Labeling and records would be required for each license holder for traceability and enforcement purposes. An effective date of July 1, 2010 is proposed for these regulations.

STATUTORY AUTHORITY: 12 M.R.S. §6851-B & §6857

PUBLIC HEARINGS:

May 11, 2010, 6:00 PM, Casco Bay Ferry Terminal (Conf. Rm), 56 Commercial Street, Portland

May 13, 2010, 6:00 PM, Ellsworth City Hall (Auditorium) One City Hall Plaza, Ellsworth

DEADLINE FOR COMMENTS: May 24, 2010

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSON:

Col. Joe Fessenden (207-624-6550)

Mail Written Comments to:

Department of Marine Resources, attn L. Churchill

ADDRESS:

PO Box 8, West Boothbay Harbor, Maine 04575-0008

WEB SITE:

<http://www.maine.gov/dmr/rulemaking/>

E-MAIL: laurice.churchill@maine.gov **TEL: (207) 633-9584** **FAX:** (207) 633-9579 **TTY:** (207) 633-9500 (Deaf/Hard of Hearing) Hearing facilities: If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

Additional information:

LD 1953 was proposed to implement some of the recommendations of the Governor's Task Force on the Economic Sustainability of Maine's Lobster Industry. As a new law it changes existing laws governing the handling of lobster parts and tails in order to improve the markets for the lobster industry. It eliminated the lobster tail permit and fee and created a new lobster processor license to allow for increased market flexibility through the rule-making process.

The proposed regulations could impact persons who hold either a Wholesale Seafood License with lobster permit; or a Wholesale Seafood License or Retail Seafood License who also held a Lobster Meat Permit. • Wholesale dealers with lobster permit who choose to process lobster tail and parts would be required to meet all current state and federal food safety requirements, pay the license fee of \$500, meet container labeling requirements for traceability, and maintain records similar to other state and federal food processing rules. • Wholesale dealers with lobster permit who choose to process lobster tail only would pay a license fee of \$159 (new), meet container labeling requirements for traceability, and maintain records similar to other state and federal food processing rules. • Wholesale Seafood License or Retail Seafood License holders who also hold a Lobster Meat Permit would be required to meet container labeling requirements for traceability, and maintain records similar to other state and federal food processing rules.

Proposed rulemaking – see underlined or ~~deleted~~ text below:

Chapter 6 Lobster Processing

6.01 Definitions

6.02 Compliance

A. These regulations apply to persons who hold a “Lobster Processor License” or “Lobster Processor Tails only License” pursuant to 12 M.R.S. §6851-B or a “Lobster Meat Permit” pursuant to 12 M.R.S. §6857.

B. Application and Fees

Each of the following is a one year license that expires on March 31st, annually:

(1) The fee for a Lobster Processor License, established in accordance with 12 M.R.S. §6851-B(2), is \$500.00.

(2) The fee for a Lobster Processor Tails only License, established in accordance with 12 M.R.S. §6851-B(2), is \$159.00.

(3) The fee for a Lobster Meat Permit is \$159.00, as provided in 12 M.R.S. §6857(5).

Applications for a license or permit may be obtained from the Department of Marine Resources, License Division, 21 SHS, Augusta, Maine 04333-0021; telephone: (207) 624-6550; or online at <http://www.maine.gov/dmr/index.htm> under "Licenses".

C. Facility

- (1) Lobster and lobster meat may be processed only at one fixed place of business or fixed facility named on the Lobster Processor License.
- (2) Lobster tails may be processed only at one fixed place of business or fixed facility named on the Lobster Processor Tails only License.
- (3) Lobster meat may be processed at the single establishment ([12 M.R.S. §6001\(14\)](#)), location or place of business named on the Lobster Meat Permit.

D. Inspection

A Marine Patrol Officer may inspect and measure lobster tails, lobster parts and the meat therein, or processed lobster in order to determine conformity with the size restrictions in [12 M.R.S. §6431](#) and [Chapter 25.70](#).

Tail measurement shall consist of removal of the meat intact from the lobster tail section and measurement of the meat to ascertain conformity with the size restrictions established by [Chapter 25.70](#). Lobster tails shall be illegal if lobster meat so removed fails to meet such size standards.

E. License holders must comply with all other applicable laws and regulations relating to the processing, packaging, storage, labeling, containment, record keeping, etc., of food products.

Federal regulations for lobster processing required by the Food and Drug Administration (FDA) Seafood HACCP Regulations are located in Title 21 CFR Part 123 – Fish and Fishery Products and on the web by searching at: <http://www.gpoaccess.gov/ecfr/index.html>

The Maine Department of Agriculture, Food and Rural Resources food regulations applicable to lobster processing/packaging/storage are available on the web at:

<http://www.maine.gov/agriculture/qar/food-regs.html>

The Department of Human Services, Maine Food Code, 10-144, CMR Chapter 200 is available on the web at:

<http://www.maine.gov/sos/cec/rules/10/144/144c200.doc>.

F. Exceptions to license requirement

(1) Hotels and Restaurants

As provided by [12 M.R.S. §6851-B\(3\)](#) and [§6857](#) a license is not required to remove lobster meat for serving at hotels and restaurants if the meat is removed from the shell in a hotel or restaurant for serving on the premises.

6.03 Restrictions & Prohibitions

A. Lobster Processor License

A Lobster Processor License (LPL) authorizes a wholesale seafood license with lobster permit holder to remove lobster tails and parts in the shell from the lobster, only under the following conditions:

- (1) The tails shall only be removed from lobster at the fixed facility name on the LPL.
- (2) The tails shall only come from legal size lobster in accordance with [12 M.R.S. §6431](#).
- (3) Lobster parts: A Lobster Processor License holder may remove lobster parts in the shell other than the tail to be offered for sale. Other lobster parts include the carapace, claws, knuckles, legs and shells.
- (4) Tail meat removed from the lobster shall remain whole and intact except as permitted by waiver in accordance with [Chapter 6.03\(A\)\(5\)](#).
- (5) Lobster Processing License – Waiver
The Commissioner may grant waivers in writing for specific lobster products when requested in writing by Lobster Processor License holders.

B. Lobster Processor Tails only License

A Lobster Processor Tails only License (LPTOL) authorizes a wholesale seafood license with lobster permit holder to remove lobster tails in the shell from the lobster, only under the following conditions:

- (1) The tails shall only be removed from lobster at the fixed facility name on the LPTOL.
- (2) The tails shall only come from legal size lobster in accordance with [12 M.R.S. §6431](#).
- (3) The tails removed from the lobster shall remain whole and intact.

C. Lobster Meat Permit

A lobster meat permit authorizes a wholesale seafood license holder or a retail seafood license holder to remove lobster meat from the shell for sale under the following conditions:

- (1) The meat may be removed from the shell only at the establishment named in the permit.
- (2) The meat may come from only legal-sized lobsters in accordance with [12 M.R.S. §6431](#).
- (3) Tail sections must be removed from the shell whole and intact.

(a) Exception for wholesale seafood license holder

The holder of a wholesale seafood license may, at the license holder's regular establishment, cut up lobster tail sections immediately prior to and for the purpose of preserving, canning or freezing them as processed stews, pies, salads, Newburg's or chowders.

C. Containers and Labeling

- (1) All containers of processed lobster meat, lobster tails, lobster parts or by products must be clearly labeled with the Lobster Processor License, Lobster Processor Tails only License or Lobster Meat Permit number of the packer pursuant to [12 M.R.S. §6851-B\(2\)\(C\)](#) and [§6857\(2\)\(D\)](#) or be identified as lawfully imported from another jurisdiction.

All containers of processed lobster meat, lobster tails, lobster parts or by products must be clearly labeled with a coding system to identify the date of pack/packaging in compliance with [9 CFR 317.8\(32\)](#), the [Maine Food Code](#) and approved in writing from the Commissioner. Address: Department of Marine Resources, Attn: Commissioner/Lobster Pack Code Request, State House Station 21, Augusta, Maine 04333-0021.

The license or permit number, identification of contents, approved pack/packaging code, and the name and address of license holder must appear in bold capitalized type, be waterproof and durable in indelible print, and must be adhered to the container at all times through to the final consumer sale or until the container is empty. The absence of the license or permit number, approved pack/packaging code, and the name and address of license holder as required by this regulation shall be prima facie evidence of violation of these regulations.

- (2) Container labeling requirements shall not apply to hermetically sealed ([12 M.R.S. §6001\(19\)](#)) containers.

D. Records

Persons who hold a Lobster Processor License or Lobster Processor Tails only License pursuant to [12 M.R.S. §6851-B](#) or a Lobster Meat Permit pursuant to [12 M.R.S. §6857](#) must maintain records pertaining to all lobster purchases and shipments received. These records must be made available to the Department upon request and must comply with the following criteria:

- (1) Each license or permit holder must have a business address at which the records are maintained;
- (2) The records must be complete, accurate and legible;
- (3) The records must be sufficient to allow each container of processed lobster, lobster tails or parts to be traced back to the specific incoming source of lobster;
- (4) The records must be maintained in a permanently bound ledger book or other recording method approved by the Department; and
- (5) The records must be retained for a minimum of one year for fresh products and for a minimum of two years for frozen products.

The following is the current Chapter 6 that would be repealed and replaced:

Chapter 6 – Procedures For Lobster Tail Permit Holders

SUMMARY:

~~These regulations establish conditions and procedures to be used by wholesale seafood license holders permitted to remove lobster tails from lobsters.~~

6.01 — Permits

~~It shall be unlawful for any person to engage in the activities authorized under Section 6862 without a current lobster tail permit.~~

6.02 — Permitted Activity

A lobster tail permit authorizes a wholesale license holder to remove lobster tails from lobsters, under the following conditions:

- ~~A. The tails shall only be removed from lobsters at the establishment named in the permit.~~
- ~~B. The tails shall only come from legal size lobsters and meet all the requirements of 12 M.R.S.A. Section 6858.~~
- ~~C. Tails shall be removed from the lobsters whole and intact and shall be maintained in that state.~~
- ~~D. Upon request by a marine patrol officer or any lawful inspector, the permit holder or any person having custody over the lobster tails shall make them available for inspection and measurement. Measurement shall consist of removal of the meat intact from the lobster tail section and measurement of the meat to ascertain conformity with the size restrictions established by 12 M.R.S.A. Section 6858(1). Lobster tails shall be illegal if lobster meat so removed fails to meet such size standards.~~

~~6.03 — Enforcement~~

~~Any marine patrol officer or other authorized inspector may inspect and measure lobster tails and the meat therein in order to determine conformity with the size restrictions set forth in 12 M.R.S.A. Section 6858 (1).~~